

## MEMORANDUM

To: Board Members

Date: December 1, 2006

From: Elliot W. Block  
Elliot Block, Chief Counsel  
**CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD**

Subject: **WAYNE FISHBACK V. VENTURA COUNTY ENVIRONMENTAL HEALTH  
DIVISION, LOCAL ENFORCEMENT AGENCY**

**APPEAL TO BEFORE THE CALIFORNIA INTEGRATED WASTE  
MANAGEMENT BOARD**

**CONSIDERATION OF HEARING OFFICER ISSUES**

Attached to this memorandum are letters from the parties to the above-entitled appeal. These letters present arguments on whether the appeal before the Board includes the issue of the appropriateness of the Hearing Officer's appointment to hear the initial stage of this appeal. These documents are in the following order: the appellant's, followed by the LEA's, and then the CIWMB staff's.

By the agreement of the parties, if the Board decides that it wishes to hear the underlying substantive appeal, the parties will each be provided with 10 minutes to provide oral argument on this initial procedural issue before the Board. Once those presentations have been completed, and the Board Members have had an opportunity to ask questions regarding this issue, the Board may adjourn into closed session to determine whether or not this procedural issue is part of the appeal that it will consider.

If the Board agrees with appellant's position that this procedural issue is properly part of the appeal, it will have to decide whether to proceed to hear the merits of the Hearing Officer appointment issue at that time, or direct that some other action be taken (postpone the hearing to allow for briefing from the parties on this issue or referral back to the Hearing Officer for an evidentiary hearing on the issue). In addition, the Board will have to decide if it wishes to proceed with the hearing on the underlying substantive issues at that time, or postpone that part of the hearing, pending resolution of the Hearing Officer issue.

If the Board Members disagree with appellant's position, the hearing on the underlying substantive issue will proceed at that time.

Due to the time constraints for scheduling the hearing of this appeal, the fact that this procedural issue came to light a week ago during discussions on what to include in the Administrative Record, and the limited amount of time the parties have had to set forth their written arguments, I wanted wait to make a

recommendation until after the parties have made their oral presentations. in case there is any additional relevant information presented at that time.

However, based upon the material presented so far (and the Administrative Record of this appeal), the following relevant facts can be gleaned:

- Appellant exchanged correspondence with the attorney for the Hearing Officer on this issue while the hearings were being conducted. (August 2, 2006 letter to Mr. McNulty, Mr. McNulty responded on August 18, 2006).
- The Appellant's Briefs did not raise this issue. (Document #3 July 18, 2006 and Document #6a September 18, 2006)
- There is no mention of this issue in the transcripts of the hearings. (Document #7 June 21, July 20 and August 18, 2006)
- The Hearing Officer decision does not mention this issue. (Document #6c)
- The letter to the Board appealing the Hearing Officer decision did not mention this issue. (October 5, 2006)

Attachments

APPELLANT'S ARGUMENTS  
REGARDING HEARING OFFICER  
APPOINTMENT

Law Office of K.M. Neiswender

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voice: 805.649-5575  
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e-mail: [kmn-law@sbcglobal.net](mailto:kmn-law@sbcglobal.net)

November 20, 2006

Elliot Block  
CIWMB  
1001 I Street  
Sacramento CA 95814

*By Facsimile and U.S. Mail 916.-319-7138*

Re: *Wayne Fishback adv Environmental Health Division*  
Appeal from LEA Decision set for December 6, 2006

Dear Mr. Block:

Pursuant to your email of November 17, 2006, this letter contains a summary of appellants' objections to the use of Jim Delperdang as the Hearing Officer in this matter.

Under Public Resources Code §44308, the Board of Supervisors of the County of Ventura (the "governing body") is to appoint a hearing panel to review decisions of the Environmental Health Division or "EHD" as the "Local Enforcement Agency" under the Waste Act. Until May of 2006, there was a hearing panel, as required by state law. However, we have been unable to locate any information as to the qualifications of the hearing panel. State law (§44308(b)(2)) requires the members of the hearing panel have some experience in waste management, but there is nothing to indicate that the Ventura County members had any such experience.

On April 28, 2006, the Director of the EHD appointed Jim Delperdang to act as a Hearing Officer. Mr. Delperdang's resume has nothing in it to indicate experience in waste management. Under §44308(d), the "governing body" (in this case, the Ventura County Board of Supervisors) may appoint a hearing officer only if the governing body has adopted procedures for making that appointment and has adopted qualifications that the hearing officer is required to meet. This matter never came before the Board of Supervisors. There were never "procedures for making that appointment" proposed, discussed or adopted. Therefore, there was never a valid appointment under the Code.

On May 3, 2006, William Stratton of the EHD sent a letter to the Waste Board eliminating the Hearing Panel and substituted a single Hearing Officer. The letter claimed that pursuant to §44308(d), the EHD (not the Board of Supervisors) was making the change.

On May 11, 2006, William Stratton issued a Cease and Desist Order to the Fishbacks, which is the order under appeal before your Board.

On May 26, 2006, the Fishbacks notified the County that they were appealing the Cease and Desist Order. On the same day, William Stratton of the EHD sent another letter to the Waste Board. In this letter, the EHD revised its May 3<sup>rd</sup> submission and said once again that pursuant to §44308(d), the EHD (**not** the Board of Supervisors) was acting under the Waste Act, in violation of the clear mandate that the "governing body" – not the LEA – must take such actions.

From this, we draw the conclusion that the LEA decided to substitute its hand-picked hearing officer – a man with no experience in waste management – in lieu of the hearing panel, in order to have the optimum chance of getting a ruling against the Fishbacks. It should be noted that Mr. Delperdang ruled against the Fishbacks in 2000, in a previous appeal concerning Certificates of Compliance under the Subdivision Map Act. That decision resulted in lengthy and costly litigation between the County and the Fishbacks.

Mr. Delperdang is an employee of the Resource Management Agency and is the "enforcement officer" for the entire Resource Management Agency, thus, it appears that Mr. Delperdang heard the appeal of an order issued under his own authority. Delperdang is supervised by the same person who supervises the employees of the EHD, Marty Robinson. Mr. Delperdang has no expertise in waste management, as required by the Waste Act. From this, we can draw the conclusion that Delperdang was hearing the appeal of an order issued under his authority, and his supervisor was also the supervisor of the persons who issued the Cease and Desist Order, thus eliminating any possibility that the appeal would be fairly heard.

In a separate violation of the procedural requirements imposed by the Waste Act, if the County operates its own waste sites, it is not allowed to appoint one of its own as a hearing officer. Under 14 CCR §18081(e)(2), when a County owns or operates a solid waste facility or disposal site (as is the case in Ventura County), the local governing body **shall maintain an** independent hearing panel for permit, enforcement and appeal purposes. Appointing a single hearing officer who is an employee of the County is a violation of the Waste Board's guidelines. Further, the appointment was made without the knowledge or consent of the "governing body," the Board of Supervisors.

As we discussed before, this issue was raised in letters to Mr. Delperdang's attorney rather than Delperdang himself. The County clearly communicated with the Fishbacks that Dennis McNulty was representing Mr. Delperdang. In addition, it took us weeks to uncover some of this information, specifically the unilateral acts of the EHD and the failure of the County to approve any of EHD's changes in violation of the Waste Act.

Elliot Block  
November 20, 2006  
Page Three

For these reasons, we contend that Mr. Delperdang was not legally appointed under §44308 because his appointment was not approved by the Board of Supervisors; that he was not qualified to hear the appeal as he had no experience in waste management; and, that the County could not have a single affiliated hearing officer because it operates its own waste sites.

Sincerely,

Kate M. Neiswender

cc by email: R. Kwong  
M. Bledsoe  
G. Eowan  
W. Fishback  
JK Astor

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August 2, 2006

Dennis McNulty  
Arnold, Bleuel, et al  
300 Esplanade, Ste. 2000  
Oxnard CA 93030

***By Facsimile and U.S. Mail 805-988-1937***

Re: *Wayne Fishback adv Environmental Health Division*  
Cease and Desist Order Hearing Set For August 31, 2006 at 10:00 am

Dear Dennis:

Mr. Fishback is concerned that the hearing on this matter is not being held before the correct appeal board. We raise this issue now, before the hearing concludes, in hopes of convincing the County that a three-member hearing panel under Public Resources Code §44308 and 14 CCR §18060 should be appointed.

I enclose the relevant code and regulatory sections. It appears that a hearing panel must have three members, and at least one of the members should have relevant experience in the waste industry.

Please review these and give me a call. Thank you for your courtesy.

Sincerely,

Kate M. Neiswender

**ARNOLD, BLEUEL,  
LAROCHELLE, MATHEWS &  
ZIRBEL, LLP**

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August 18, 2006

**VIA FACSIMILE TRANSMISSION**  
**805/649-8188**  
**ORIGINAL VIA U.S. MAIL**

Kate M. Neiswender  
Law Office of Kate Neiswender  
Post Office Box 24617  
Ventura, CA 93002

Re: *Fishback Appeal from Cease and Desist Order  
of Environmental Health Division*

Dear Ms. Neiswender:

This letter is in response to your letter dated August 2, 2006. In your letter you suggested a single hearing officer lacked the authority to decide this matter and a three-member panel should be appointed in accordance with *Public Resources Code §44308* and *14 CCR §18060*. My review of the relevant statutes indicates a single hearing officer is appropriate in accordance with *Public Resources Code §44308(d)*.

*Public Resources Code §44308(a)* provides that hearings by the enforcement agency shall be conducted either by a three-member hearing panel or by a hearing officer appointed pursuant to subdivision (d). Subdivision (d), in turn, provides that a hearing officer is appropriate so long as the governing body has adopted qualifications for the hearing officer and procedures for making the appointment. It appears the Environmental Health Division has adopted a formal Enforcement Program Plan which meets these requirements. As seen in the attached correspondence, the California Integrated Waste Management Board has specifically approved this plan and the appointment of Mr. Delperdang as a hearing officer. Accordingly, the hearing on Mr. Fishback's appeal will continue before Mr. Delperdang on August 31, 2006 at 10:00 A.M.

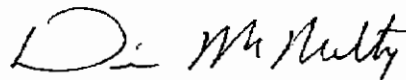


Kate M. Neiswender  
August 18, 2006  
Page 2

Should you have any questions or wish to discuss this matter further, please do not hesitate to contact me.

Very truly yours,

ARNOLD, BLEUEL, LAROCHELLE,  
MATHEWS & ZIRBEL, LLP

A handwritten signature in black ink, appearing to read "D. McNulty". The signature is fluid and cursive, with the first letter "D" being large and prominent.

Dennis P. McNulty

DM:jm  
Enclosures

cc: William Stratten  
Jim Delperdang

ventura county/fishback/neiswinder ltr01

RESOURCE MANAGEMENT AGENCY  
**county of ventura**

Environmental Health Division  
Robert Gallagher  
Director

April 28, 2006

Jim Delperdang  
Director of Weights and Measures/County Sealer  
800 South Victoria Avenue  
Ventura, CA 93009-1750

**APPOINTMENT AS HEARING OFFICER FOR VENTURA COUNTY LOCAL  
ENFORCEMENT AGENCY**

Pursuant to the authority granted me by the Ventura County Ordinance Code, Section 4701-14, I hereby appoint you as Hearing Officer to conduct hearings in accordance with the Public Resources Code, Section 44308 et seq and the Ventura County Ordinance Code, Section 4730 et seq.

*Robert Gallagher*  
ROBERT GALLAGHER, DIRECTOR  
ENVIRONMENTAL HEALTH DIVISION

MAY - 8 2006

*County Counsel ?  
EHD Admin.*

F:\USERS\McKinnSW\P\GALLAGHER\HHP Hearing Officer Appointment 4 28 06.doc

800 South Victoria Avenue, Ventura, CA 93009-1730 (805) 654-2813 FAX (805) 654-2480  
Internet Web Site Address: [www.ventura.org/envh](http://www.ventura.org/envh)

1 of 9

RESOURCE MANAGEMENT AGENCY  
**county of ventura**

Environmental Health Division  
Robert Gallagher  
Director

May 16, 2006

Sharon Anderson  
California Integrated Waste Management Board  
Permitting and Enforcement Division  
1001 I Street  
PO Box 4025  
Sacramento, CA 95812-4025

**VENTURA COUNTY LOCAL ENFORCEMENT AGENCY - ENFORCEMENT  
PROGRAM PLAN HEARING PANEL - AMENDMENT**

Pursuant to Public Resources Code, Section 44308 (d), the Ventura County Environmental Health Division, as the Ventura County Local Enforcement Agency (LEA), replaced the Independent Hearing Panel with a Hearing Officer. We have made a revision to the previous Hearing Officer and Independent Hearing Panel Member Information Package that was sent to you under cover letter dated May 3, 2006. In accordance with California Code of Regulations, Title 14, Section 18081 (e) (4), the LEA submits the enclosed (revised) amendments to the Ventura County LEA Enforcement Program Plan (EPP) for the CIWMB's records. The EPP was accepted by the CIWMB on June 16, 1992, and approved by Resolution 92-72 on July 16, 1992.

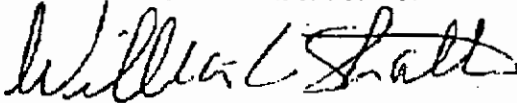
Remove Old Pages

IX-12 through IX-27

Insert New pages

IX-12 through IX-27

Please contact Steve Kephart at 805/654-2434 if you have any questions concerning this letter or the attachments.



William C. Stratton, Manager  
Technical Services Section  
Environmental Health Division

Attachments

- c: Melinda Talent, EHD with attachments
- Steve Kephart, EHD with attachments
- EPP File, with attachments

FROM : UC ENV HEALTH

FAX NO. : 8056542480

Aug. 17 2006 03:26PM P2/19

JUN 12 2006



Dan Skopec  
Acting Secretary for  
Environmental  
Protection

## California Integrated Waste Management Board

Margo Reid Brown, Chair  
1001 I Street • Sacramento, California 95814 • (916) 341-6000  
Mailing Address: P. O. Box 4025, Sacramento, CA 95812-4025  
[www.ciwmmb.ca.gov](http://www.ciwmmb.ca.gov)



Arnold Schwarzenegger  
Governor

June 8, 2006

Bill Stratton, Program Manager  
County of Ventura Resource Management Agency  
Environmental Health Division  
800 S Victoria Ave  
Ventura, CA 93009-1730

Subject: -Acceptance of Ventura County Solid Waste Hearing Officer Submitted May 2006

Dear Mr. Stratton:

The California Integrated Waste Management Board (CIWMB) evaluated your agency's submittal of the Enforcement Program Plan (EPP) May 2006 updates which included:

- Replace page II-28: Chapter II – Designation Information Package Enclosure #7 Hearing Officer
  - County of Ventura letter appointing Jim Delperdang as the Hearing Officer for the Ventura County Local Enforcement Agency, 4/28/2006
- Insertion - 2006 appointment package:
  - Hearing Officer Statement of Qualifications for Jim Delperdang , 4/25/2006
  - Administrative Advocate Training Certificate for Jim Delperdang, May 1-2, 1996
  - Example of a Notice of Decision dated 4/10/2003 with Jim Delperdang as the acting Hearing Officer regarding a violation of the California Health and Safety Code and if the penalty imposed by the Ventura County Environmental Health Division was appropriate.
- Replacement pages IX-12 – IX-27: Hearing Officer and Independent Hearing Panel Member Information Package, 5/15/2006

Appropriate CIWMB staff have reviewed the above listed EPP updates and found them acceptable for meeting the Public Resources Code (PRC) 44308 requirements related to 1) the appointment of a hearing officer and 2) adopting hearing officer qualifications.

If you have any questions, do not hesitate to call me at (916) 341-6379.

Sincerely,

Gabe Aboushanab, Supervisor  
LEA Program Assistance and Evaluation  
Permitting and Enforcement Division

California Environmental Protection Agency

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Join Governor Schwarzenegger to Keep California Rolling.  
Every Californian can help to reduce energy and fuel consumption. For a list of simple ways  
you can reduce demand and cut your energy and fuel costs, Flex Your Power and visit [www.flexpower.com](http://www.flexpower.com).

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REGARDING HEARING OFFICER  
APPOINTMENT

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COUNTY COUNSEL

LEROY SMITH  
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JAMES W. THONIS  
LITIGATION SUPERVISOR



## COUNTY COUNSEL

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Linda L. Stevenson  
Thomas W. Temple

November 29, 2006

Elliot Block, Chief Counsel  
California Integrated Waste Management Board  
1001 I Street  
Sacramento, CA 95814-4025

Re: *Wayne Fishback v. Ventura County Environmental Health Division, Local Enforcement Agency* Before the California Integrated Wasted Management Board

Dear Mr. Block:

This letter constitutes the Ventura County Environmental Health Division, Local Enforcement Agency's ("EHD/LEA") formal response to the question: "[I]s the issue of whether or not the local hearing officer was properly appointed properly included within the present appeal?" (See November 22, 2006, letter from Block to Neiswender, Kwong and Bledsoe re above-referenced case and "Revised Procedures for Board Hearing on Appeal of Decision by Ventura County Hearing Officer Affirming Cease and Desist Order Issued May 11, 2006 by Ventura County Environmental Health Division As the Local Enforcement Agency.")

The EHD/LEA asserts that this issue is not properly before the California Integrated Waste Management Board ("CIWMB"). There are several reasons why this issue is not properly before the CIWMB. First and foremost, appellant Fishback has not exhausted his administrative remedies because he failed to adequately raise and preserve the issue of "whether or not the local hearing officer was properly appointed" at any time prior to or during the public hearings conducted by the Ventura County Hearing Officer

in this case. By failing to do so, the appellant Fishback waived his right to raise this issue in the appeal that is currently before the CIWMB.

The principle of administrative exhaustion is well established and compliance with the exhaustion doctrine is mandatory for the trial courts to obtain jurisdiction to review an administrative decision. The principle of administrative exhaustion also applies in this case because Public Resources Code section 45030 et seq. establishes an analogous quasi-adjudicatory framework for appeals of LEA decisions to the CIWMB regarding solid waste disposal matters. Specifically, Public Resources Code section 45030, subdivision (a), states that either a hearing panel or hearing officer's "written decision" may be appealed to the CIWMB by a party to that hearing. From an exhaustion doctrine perspective, the County Hearing Officer is akin to the administrative agency's decision and the CIWMB acts like a trial court sitting in review of that agency action/administrative decision.

*Park Area Neighbors v. Town of Fairfax* (1994) 29 Cal.App.4th 1442, emphasized the importance of the doctrine:

"Under the doctrine of exhaustion of administrative remedies, 'where an administrative remedy is provided by statute, relief must be sought from the administrative body and this remedy exhausted before the courts will act.' (*Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, 292 [parallel cites omitted].) This rule 'is not a matter of judicial discretion, but is a fundamental rule of procedure laid down by courts of last resort, followed under the doctrine of *stare decisis* and binding upon all courts.' (*Id.* at p. 293.) Exhaustion of administrative remedies is, in short, 'a jurisdictional prerequisite to resort to the courts.' (*Ibid.*) Its rationale is the prevention of interference with the jurisdiction of administrative tribunals by the courts, which are only authorized to review final administrative determinations. (*Hayward v. Henderson* (1979) 88 Cal.App.3d 64, 70 [parallel cites omitted].) 'The essence of the exhaustion doctrine is the public agency's opportunity to receive and respond to articulated factual issues and legal theories before its actions are subjected to judicial review.' (*Coalition for Student Action v. City of Fullerton* (1984) 153 Cal.App.3d 1194, 1198 [parallel cites omitted], original italics.)" (*Park Area Neighbors v. Town of Fairfax*, *supra*, 29 Cal.App.4th at p. 1447, underline emphasis added.)

Echoing the same theme, *Evans v. City of San Jose* (2005) 128 Cal.App.4th 1123, further explained:

“The purposes of the doctrine are not satisfied if the objections are not sufficiently specific so as to allow the Agency the opportunity to evaluate and respond to them.” (*Evans v. City of San Jose, supra*, 128 Cal.App.4th at p. 1138.)

A review of the over 1,300-page administrative record compiled during the County Hearing Officer hearings, which includes more than 300 pages of hearing transcripts, reveals no evidence, statement or documentation of the appellant, appellant’s representatives, or appellant’s attorney articulating the issue of the propriety of the County Hearing Officer’s appointment. Neither the appellant nor the appellant’s attorney presented anything at the June 21, July 20 or August 31, 2006, hearings that can be construed as the presentation or preservation of this issue such that the Hearing Officer or the EHD/LEA could respond to it. This issue of the Hearing Officer’s appointment and legal authority to hear the case is also NOT a part of the County Hearing Officer’s September 22, 2006, written decision on the matter of Fishback’s appeal of a Cease and Desist Order issued by the EHD/LEA dated May 11, 2006, for alleged violations of Public Resources Code sections 44001 and 44002, subdivision (a). (Admin. Rec., Doc. 6.c., Notice of Decision, pp. 21-23.) Therefore, the CIWMB is not in a position to review that which is not in the written decision of the hearing panel or hearing officer. (Pub. Resources Code § 45030, subd. (a).)

In addition, this issue does not involve “a failure of a hearing panel or hearing officer to render a decision or consider the request for review . . .” (Pub. Resources Code § 45030, subd. (a).) This issue also does not involve “a determination by the governing body not to direct the hearing panel or hearing officer to hold a public hearing . . .” (Pub. Resources Code § 45030, subd. (a).) The appellant’s production of limited, self-serving documentation at this time after the conclusion of the County Hearing Officer’s hearings is insufficient for administrative exhaustion purposes. Accordingly, the CIWMB has no discretion and must apply exhaustion principles when supported by facts to bar appellant Fishback from raising issues for the first time before this Board that were not raised before the Hearing Officer.

The EHD/LEA anticipates that appellant will try to counter the exhaustion argument by claiming he is raising only legal issues and he is not required to raise legal issues before the Hearing Officer because the CIWMB is the final arbiter of legal issues



related to the solid waste facilities and management. Case law does not support this theory. In *Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165, the court stated: ““The essence of the exhaustion doctrine is the public agency’s opportunity to receive and respond to articulated factual issues and legal theories before its actions are subjected to judicial review.”” (*Id.*, at p. 1215.) Moreover, litigants must also exhaust administrative remedies on constitutional issues. (*Department of Personnel Administration v. Superior Court* (1992) 5 Cal.App.4th 155, 169-170; *Mountain View Chamber of Commerce v. City of Mountain View* (1978) 77 Cal.App.3d 82, 96.)

It has long been the standard in situations where administrative exhaustion is required that the issue has to be fully presented to the administrative body, which in this case is the County Hearing Officer, in order to satisfy the exhaustion requirement. A cursory presentation is not sufficient. Courts have described the scope of this burden, for example:

“It is fundamental that the review of administrative proceedings provided by section 1094.5 of the Code of Civil Procedure is confined to the *issues* appearing in the record of that body as made out by the parties to the proceedings, though additional *evidence*, in a proper case, may be received. [Citations omitted.] It was never contemplated that a party to an administrative hearing should withhold any defense then available to him or make only a perfunctory or ‘skeleton’ showing in the hearing and thereafter obtain an unlimited trial de novo, on expanded issues, in the reviewing court. [Citations omitted.] The rule compelling a party to present all legitimate issues before the administrative tribunal is required in order to preserve the integrity of the proceedings before that body and to endow them with a dignity beyond that of a mere shadow-play.” (*Bohn v. Watson* (1954) 130 Cal.App.2d 24, 37.)

Appellant’s failure to fully disclose and articulate his arguments regarding the appointment and authority of the County’s Hearing Officer has hidden the issue and deprived the EHD/LEA of an opportunity to comment, rebut or oppose the appellant’s contentions. Moreover, the August 2, 2006, letter from appellant’s attorney to the attorney for the County Hearing Officer, which purportedly raises the issue of the Hearing Officer’s appointment, was never copied or sent to the EHD/LEA or to the County Counsel’s Office for its review and response.

Appellant Fishback may also try to avoid or block the exhaustion issue by arguing that to require exhaustion would have been futile. There are no facts that demonstrate the Hearing Officer would not have corrected any alleged flaw in his review process had he been given notice of the issue. In any event, futility is a disfavored argument. The California Supreme Court holds a dim view of the futility theory. Any exception for futility is very narrow, if that exception exists at all under current jurisprudence. (*Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, 301 ["The whole argument [futility] rests upon an illogical and impractical basis, since it permits the party applying to the court to assert without any conclusive proof, and without any possibility of successful challenge, the outcome of an appeal which the administrative body has not even been permitted to decide."].) The *Abelleira* Court noted that a litigant is not allowed to bypass the superior court and go to an appellate court merely because a trial judge may not accept the litigant's views. (*Ibid.*)

Therefore, appellant Fishback is precluded, by his own actions, from raising this issue before the CIWMB at this time. The issue is not properly before your Board because appellant Fishback's failure to exhaust remedies by preserving this issue before the County Hearing Officer, and thus, there is compelling justification for the CIWMB to deny the appellant's request for this issue to be heard now.

Sincerely,



ROBERT N. KWONG  
Assistant County Counsel

RNK:sld

cc: Michael Bledsoe, Senior Staff Counsel, CIWMB  
Kate Neiswender, Law Office of K.M. Neiswender  
Chris Stephens, Director, Resource Management Agency  
Bob Gallagher, Environmental Health Division Director  
Bill Stratton, Technical Services Manager

**CIWMB STAFF'S ARGUMENTS  
REGARDING HEARING OFFICER  
APPOINTMENT**



LINDA S. ADAMS  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

# CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD



ARNOLD SCHWARZENEGGER  
GOVERNOR

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November 29, 2006

## VIA HAND-DELIVERY

Mr. Elliot Block  
Chief Counsel  
California Integrated Waste Management Board  
1001 I Street, 23<sup>rd</sup> Floor  
Sacramento, CA 95814

Subject: Fishback Appeal – Consideration of Hearing Officer Issues

Dear Mr. Block:

You have requested letter briefs on the following question: Is the issue of whether Ventura County properly appointed a Hearing Officer to be considered by the California Integrated Waste Management Board (the "Board") in its hearing on the appeal brought by Mr. Wayne Fishback, scheduled for December 6, 2006 (the "Fishback Appeal")? For the reasons set out below, the answer to your question is "no."

Ms. Kate Neiswender, counsel for Mr. Fishback, argues in her November 20, 2006 letter to you (copy attached) that she raised the issue of the propriety of the Hearing Officer in correspondence to Mr. Dennis McNulty, counsel for the Hearing Officer, on August 2, 2006, to the effect that the issue should also be considered as part of Mr. Fishback's appeal to the Board. She also argues the merits of the case in her November 20 letter, focusing on whether Ventura County followed the proper procedures in appointing a Hearing Officer, in lieu of an independent Hearing Panel, and whether Mr. Jim Delperdang, the Hearing Officer, is qualified under the law to serve in that capacity. (You will note, of course, that Ms. Neiswender's letter does not constitute evidence in support of her arguments on the merits of the issue; her letter is essentially in the form of an offer of proof.)



As a preliminary matter, please note that I do not here address the merits of the issue Ms. Neiswender raises. The only matter before you and the Board is whether the Board, in its December 6 hearing on the Fishback Appeal, should also consider the Hearing Officer issue. I trust that the Board will find the issue has not been timely raised, and cannot be considered at this time. However, in the event that the Board determines it will consider the issue, it will be necessary to continue the hearing on the Fishback Appeal and remand the matter back to the local Hearing Officer so that the parties can introduce evidence on the issue and prepare arguments on the merits. Except as provided in regulation for direct Board enforcement action and evaluation of Local Enforcement Agencies ("LEAs"), there is no procedure in the law governing the Board that gives the Board original jurisdiction over disputes arising in connection with the activities of LEAs and the operation of solid waste facilities. Adjudication of those matters must commence at the local Hearing Panel or Hearing Officer level, unless a complainant seeks relief in the civil courts (e.g., through a writ of mandate).

Ms. Neiswender cites no legal authority in support of her argument that the Hearing Officer issue is properly before the Board at this time. She simply asserts that her correspondence to Mr. McNulty, in effect, raised the issue to the Hearing Officer and, consequently, to the Board in Mr. Fishback's appeal of the Hearing Officer's decision. In the absence of legal authority for the proposition she asserts, the Board should deny her request out of hand.

There is ample authority in support of Board staff's view, reflected here, that it would be improper for the Board to consider the Hearing Officer issue in its hearing on the Fishback Appeal:

1. Fishback Failed To Raise the Issue of the Jurisdiction of the Hearing Officer during His Appeal of the LEA's Cease and Desist Order.

In his appeal of the Cease and Desist Order, Fishback did not raise the issues of whether the Hearing Officer had jurisdiction to hear Fishback's appeal nor whether the Hearing Officer was qualified to hear the matter under applicable law. See, Administrative Record for Fishback Appeal ("Record"), Document 1, p. 2. Fishback could have raised the issue at that time. A person who alleges that an LEA has failed to comply with the law or Board regulations may request a hearing before the local Hearing Panel or Hearing Officer to challenge the LEA's conduct. Public Resources Code ("PRC") § 44307.

If, as Neiswender claims, she was unable to develop evidence on the question until the hearing before the Hearing Officer had begun, she could have raised the question during the hearing itself. She wrote of her concerns to Mr. McNulty on August 2, 2006, and he responded on August 18, 2006, well before the final day of the hearing, August 31, 2006. (McNulty's response is included with Neiswender's August 2

letter, attached hereto.) There is no evidence that she raised the matter in the hearing. There is no reference to this issue in the transcripts of the hearing (the hearing extended over three days – June 21, 2006, July 20, 2006, and August 31, 2006), nor in the briefs filed by the parties, including Fishback's closing brief, filed on September 18, 2006. (The transcripts of the hearing are found in Document 7 of the Record. Opening briefs are found in Documents 2 and 3 of the Record. Closing briefs are found in Document 6 of the Record.) Neiswender's August 2 letter expressing concern and McNulty's response are not contained in the Record of the local hearing. Moreover, the Hearing Officer's Decision, dated September 22, 2006, does not mention the issue. It is clear that the issue was not part of the appeal at the local level.

Ms. Neiswender cites only to her letter of August 2, 2006 to Mr. McNulty as the basis for her argument that the Hearing Officer issue is part of the Fishback Appeal. In his August 18 response, Mr. McNulty advised her that Ventura County had proceeded properly in appointing a Hearing Officer and that the hearing on the Fishback matter would proceed on August 31, 2006. Surely if Ms. Neiswender wanted to challenge the authority of the Hearing Officer, she would have taken some further action at that time, such as stating her objection to the proceedings on the record or filing a writ in superior court challenging the validity of the hearing before the Hearing Officer. Ms. Neiswender could have also challenged Mr. Delperdang on grounds set out in the Administrative Procedures Act for persons who are not qualified to serve as a presiding officer (see, Government Code §§ 11425.30 and 11425.40) And yet, she did nothing.

2. Fishback Failed To Raise the Issue of the Jurisdiction of the Hearing Officer in His Appeal to the Board.

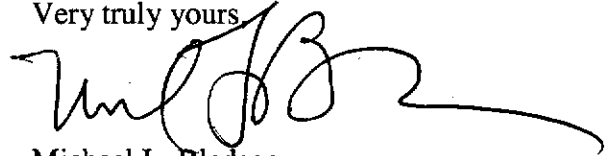
Under PRC § 45030(a), a party to a local hearing before a Hearing Panel or a Hearing Officer may appeal to the Board, seeking its review of the local panel or officer's decision. The appellant commences his or her appeal by "filing a written request for a hearing together with a brief summary statement of the legal and factual basis for the appeal." PRC § 45030(b). A copy of Fishback's request for a hearing is attached (letter from Mr. John Kelly Astor to Michael Bledsoe, dated October 5, 2006). The question of the Hearing Officer was not included in Fishback's request for a hearing.

Accordingly, the issues Fishback raises regarding the Hearing Officer are not properly before the Board at this time, and the Board should not open the hearing on the Fishback Appeal to address these issues. That decision will not preclude Mr. Fishback from raising them anew before the local Hearing Officer

Elliot Block  
November 29, 2006  
Page 4

under a new request for hearing under PRC § 44307, provided he raises them in a timely manner.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Michael L. Bledsoe', with a long horizontal flourish extending to the right.

Michael L. Bledsoe  
Senior Staff Counsel

Attachments

cc: Robert Kwong, Counsel for LEA  
Kate Neiswender, Counsel for Wayne Fishback

Law Office of K.M. Neiswender

Lawyers ♦ Consulting  
Post Office Box 24617  
Ventura, California 93002  
voice: 805.649-5575  
fax: 805.649.8188  
e-mail: [kmn-law@sbcglobal.net](mailto:kmn-law@sbcglobal.net)

November 20, 2006

Elliot Block  
CIWMB  
1001 I Street  
Sacramento CA 95814

*By Facsimile and U.S. Mail 916.-319-7138*

Re: *Wayne Fishback adv Environmental Health Division*  
Appeal from LEA Decision set for December 6, 2006

Dear Mr. Block:

Pursuant to your email of November 17, 2006, this letter contains a summary of appellants' objections to the use of Jim Delperdang as the Hearing Officer in this matter.

Under Public Resources Code §44308, the Board of Supervisors of the County of Ventura (the "governing body") is to appoint a hearing panel to review decisions of the Environmental Health Division or "EHD" as the "Local Enforcement Agency" under the Waste Act. Until May of 2006, there was a hearing panel, as required by state law. However, we have been unable to locate any information as to the qualifications of the hearing panel. State law (§44308(b)(2)) requires the members of the hearing panel have some experience in waste management, but there is nothing to indicate that the Ventura County members had any such experience.

On April 28, 2006, the Director of the EHD appointed Jim Delperdang to act as a Hearing Officer. Mr. Delperdang's resume has nothing in it to indicate experience in waste management. Under §44308(d), the "governing body" (in this case, the Ventura County Board of Supervisors) may appoint a hearing officer only if the governing body has adopted procedures for making that appointment and has adopted qualifications that the hearing officer is required to meet. This matter never came before the Board of Supervisors. There were never "procedures for making that appointment" proposed, discussed or adopted. Therefore, there was never a valid appointment under the Code.

On May 3, 2006, William Stratton of the EHD sent a letter to the Waste Board eliminating the Hearing Panel and substituted a single Hearing Officer. The letter claimed that pursuant to §44308(d), the EHD (not the Board of Supervisors) was making the change.

On May 11, 2006, William Stratton issued a Cease and Desist Order to the Fishbacks, which is the order under appeal before your Board.



On May 26, 2006, the Fishbacks notified the County that they were appealing the Cease and Desist Order. On the same day, William Stratton of the EHD sent another letter to the Waste Board. In this letter, the EHD revised its May 3<sup>rd</sup> submission and said once again that pursuant to §44308(d), the EHD (**not** the Board of Supervisors) was acting under the Waste Act, in violation of the clear mandate that the "governing body" – not the LEA – must take such actions.

From this, we draw the conclusion that the LEA decided to substitute its hand-picked hearing officer – a man with no experience in waste management – in lieu of the hearing panel, in order to have the optimum chance of getting a ruling against the Fishbacks. It should be noted that Mr. Delperdang ruled against the Fishbacks in 2000, in a previous appeal concerning Certificates of Compliance under the Subdivision Map Act. That decision resulted in lengthy and costly litigation between the County and the Fishbacks.

Mr. Delperdang is an employee of the Resource Management Agency and is the "enforcement officer" for the entire Resource Management Agency, thus, it appears that Mr. Delperdang heard the appeal of an order issued under his own authority. Delperdang is supervised by the same person who supervises the employees of the EHD, Marty Robinson. Mr. Delperdang has no expertise in waste management, as required by the Waste Act. From this, we can draw the conclusion that Delperdang was hearing the appeal of an order issued under his authority, and his supervisor was also the supervisor of the persons who issued the Cease and Desist Order, thus eliminating any possibility that the appeal would be fairly heard.

In a separate violation of the procedural requirements imposed by the Waste Act, if the County operates its own waste sites, it is not allowed to appoint one of its own as a hearing officer. Under 14 CCR §18081(e)(2), when a County owns or operates a solid waste facility or disposal site (as is the case in Ventura County), the local governing body **shall maintain an** independent hearing panel for permit, enforcement and appeal purposes. Appointing a single hearing officer who is an employee of the County is a violation of the Waste Board's guidelines. Further, the appointment was made without the knowledge or consent of the "governing body," the Board of Supervisors.

As we discussed before, this issue was raised in letters to Mr. Delperdang's attorney rather than Delperdang himself. The County clearly communicated with the Fishbacks that Dennis McNulty was representing Mr. Delperdang. In addition, it took us weeks to uncover some of this information, specifically the unilateral acts of the EHD and the failure of the County to approve any of EHD's changes in violation of the Waste Act.

Elliot Block  
November 20, 2006  
Page Three

For these reasons, we contend that Mr. Delperdang was not legally appointed under §44308 because his appointment was not approved by the Board of Supervisors; that he was not qualified to hear the appeal as he had no experience in waste management; and, that the County could not have a single affiliated hearing officer because it operates its own waste sites.

Sincerely,

Kate M. Neiswender

cc by email: R. Kwong  
M. Bledsoe  
G. Eowan  
W. Fishback  
JK Astor

Law Office of K.M. Neiswender

Lawyers ♦ Consulting  
Post Office Box 24617  
Ventura, California 93002  
voice: 805.649-5575  
fax: 805.649.8188  
e-mail: kmn@inreach.com

August 2, 2006

Dennis McNulty  
Arnold, Bleuel, et al  
300 Esplanade, Ste. 2000  
Oxnard CA 93030

***By Facsimile and U.S. Mail 805-988-1937***

Re: *Wayne Fishback adv Environmental Health Division*  
Cease and Desist Order Hearing Set For August 31, 2006 at 10:00 am

Dear Dennis:

Mr. Fishback is concerned that the hearing on this matter is not being held before the correct appeal board. We raise this issue now, before the hearing concludes, in hopes of convincing the County that a three-member hearing panel under Public Resources Code §44308 and 14 CCR §18060 should be appointed.

I enclose the relevant code and regulatory sections. It appears that a hearing panel must have three members, and at least one of the members should have relevant experience in the waste industry.

Please review these and give me a call. Thank you for your courtesy.

Sincerely,

Kate M. Neiswender

**ARNOLD, BLEUEL,  
LAROCHELLE, MATHEWS &  
ZIRBEL, LLP**

ATTORNEYS AT LAW

ATTORNEYS

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BARTLEY S. BLEUEL  
DENNIS LAROCHELLE  
JOHN M. MATHEWS  
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writer's e-mail  
dmcnulty@atozlaw.com

August 18, 2006

**VIA FACSIMILE TRANSMISSION**  
**805/649-8188**  
**ORIGINAL VIA U.S. MAIL**

Kate M. Neiswender  
Law Office of Kate Neiswender  
Post Office Box 24617  
Ventura, CA 93002

Re: *Fishback Appeal from Cease and Desist Order  
of Environmental Health Division*

Dear Ms. Neiswender:

This letter is in response to your letter dated August 2, 2006. In your letter you suggested a single hearing officer lacked the authority to decide this matter and a three-member panel should be appointed in accordance with *Public Resources Code §44308* and *14 CCR §18060*. My review of the relevant statutes indicates a single hearing officer is appropriate in accordance with *Public Resources Code §44308(d)*.

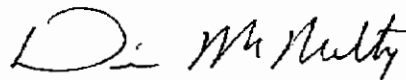
*Public Resources Code §44308(a)* provides that hearings by the enforcement agency shall be conducted either by a three-member hearing panel or by a hearing officer appointed pursuant to subdivision (d). Subdivision (d), in turn, provides that a hearing officer is appropriate so long as the governing body has adopted qualifications for the hearing officer and procedures for making the appointment. It appears the Environmental Health Division has adopted a formal Enforcement Program Plan which meets these requirements. As seen in the attached correspondence, the California Integrated Waste Management Board has specifically approved this plan and the appointment of Mr. Delperdang as a hearing officer. Accordingly, the hearing on Mr. Fishback's appeal will continue before Mr. Delperdang on August 31, 2006 at 10:00 A.M.

Kate M. Neiswender  
August 18, 2006  
Page 2

Should you have any questions or wish to discuss this matter further, please do not hesitate to contact me.

Very truly yours,

ARNOLD, BLEUEL, LAROCHELLE,  
MATHEWS & ZIRBEL, LLP

A handwritten signature in black ink, appearing to read "D. McNulty". The signature is fluid and cursive, with a large initial "D" and a stylized "McNulty".

Dennis P. McNulty

DM:jm  
Enclosures

cc: William Stratten  
Jim Delperdang

ventura county/fishback/neiswinder ltr01

RESOURCE MANAGEMENT AGENCY  
**county of ventura**

Environmental Health Division  
Robert Gallagher  
Director

April 28, 2006

Jim Delperdang  
Director of Weights and Measures/County Sealer  
800 South Victoria Avenue  
Ventura, CA 93009-1750

**APPOINTMENT AS HEARING OFFICER FOR VENTURA COUNTY LOCAL  
ENFORCEMENT AGENCY**

Pursuant to the authority granted me by the Ventura County Ordinance Code, Section 4701-14, I hereby appoint you as Hearing Officer to conduct hearings in accordance with the Public Resources Code, Section 44308 et seq and the Ventura County Ordinance Code, Section 4730 et seq.

*Robert Gallagher*  
ROBERT GALLAGHER, DIRECTOR  
ENVIRONMENTAL HEALTH DIVISION

MAY - 8 2006

*County Counsel ?  
EHD Admin.*

F:\USERS\McKinnSW\P\GALLAGHER\HHP Hearing Officer Appointment 4 28 06.doc

800 South Victoria Avenue, Ventura, CA 93009-1730 (805) 654-2813 FAX (805) 654-2480  
Internet Web Site Address: [www.ventura.org/envh](http://www.ventura.org/envh)

1 of 9

RESOURCE MANAGEMENT AGENCY  
**county of ventura**

Environmental Health Division  
Robert Gallagher  
Director

May 16, 2006

Sharon Anderson  
California Integrated Waste Management Board  
Permitting and Enforcement Division  
1001 I Street  
PO Box 4025  
Sacramento, CA 95812-4025

**VENTURA COUNTY LOCAL ENFORCEMENT AGENCY - ENFORCEMENT  
PROGRAM PLAN HEARING PANEL - AMENDMENT**

Pursuant to Public Resources Code, Section 44308 (d), the Ventura County Environmental Health Division, as the Ventura County Local Enforcement Agency (LEA), replaced the Independent Hearing Panel with a Hearing Officer. We have made a revision to the previous Hearing Officer and Independent Hearing Panel Member Information Package that was sent to you under cover letter dated May 3, 2006. In accordance with California Code of Regulations, Title 14, Section 18081 (e) (4), the LEA submits the enclosed (revised) amendments to the Ventura County LEA Enforcement Program Plan (EPP) for the CIWMB's records. The EPP was accepted by the CIWMB on June 16, 1992, and approved by Resolution 92-72 on July 16, 1992.

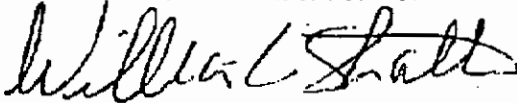
Remove Old Pages

IX-12 through IX-27

Insert New pages

IX-12 through IX-27

Please contact Steve Kephart at 805/654-2434 if you have any questions concerning this letter or the attachments.



William C. Stratton, Manager  
Technical Services Section  
Environmental Health Division

Attachments

- c: Melinda Talent, EHD with attachments
- Steve Kephart, EHD with attachments
- EPP File, with attachments

FROM : UC ENV HEALTH

FAX NO. : 8056542480

Aug. 17 2006 03:26PM P2/19

JUN 12 2006



Dan Skopec  
Acting Secretary for  
Environmental  
Protection

## California Integrated Waste Management Board

Margo Reid Brown, Chair  
1001 I Street • Sacramento, California 95814 • (916) 341-6000  
Mailing Address: P. O. Box 4025, Sacramento, CA 95812-4025  
[www.ciwmmb.ca.gov](http://www.ciwmmb.ca.gov)



Arnold Schwarzenegger  
Governor

June 8, 2006

Bill Stratton, Program Manager  
County of Ventura Resource Management Agency  
Environmental Health Division  
800 S Victoria Ave  
Ventura, CA 93009-1730

Subject: -Acceptance of Ventura County Solid Waste Hearing Officer Submitted May 2006

Dear Mr. Stratton:

The California Integrated Waste Management Board (CIWMB) evaluated your agency's submittal of the Enforcement Program Plan (EPP) May 2006 updates which included:

- Replace page II-28: Chapter II – Designation Information Package Enclosure #7 Hearing Officer
  - County of Ventura letter appointing Jim Delperdang as the Hearing Officer for the Ventura County Local Enforcement Agency, 4/28/2006
- Insertion - 2006 appointment package:
  - Hearing Officer Statement of Qualifications for Jim Delperdang , 4/25/2006
  - Administrative Advocate Training Certificate for Jim Delperdang, May 1-2, 1996
  - Example of a Notice of Decision dated 4/10/2003 with Jim Delperdang as the acting Hearing Officer regarding a violation of the California Health and Safety Code and if the penalty imposed by the Ventura County Environmental Health Division was appropriate.
- Replacement pages IX-12 – IX-27: Hearing Officer and Independent Hearing Panel Member Information Package, 5/15/2006

Appropriate CIWMB staff have reviewed the above listed EPP updates and found them acceptable for meeting the Public Resources Code (PRC) 44308 requirements related to 1) the appointment of a hearing officer and 2) adopting hearing officer qualifications.

If you have any questions, do not hesitate to call me at (916) 341-6379.

Sincerely,

Gabe Aboushanab, Supervisor  
LEA Program Assistance and Evaluation  
Permitting and Enforcement Division

California Environmental Protection Agency

Printed on Recycled Paper

Join Governor Schwarzenegger to Keep California Rolling.  
Every Californian can help to reduce energy and fuel consumption. For a list of simple ways  
you can reduce demand and cut your energy and fuel costs, Flex Your Power and visit [www.flexpower.com](http://www.flexpower.com).



LAW OFFICES  
**ASTOR & PHILLIPS**  
A PROFESSIONAL LAW CORPORATION

ORANGE COUNTY OFFICE  
333 CITY BOULEVARD WEST  
SUITE 705  
ORANGE, CALIFORNIA 92668-2924  
TELEPHONE (714) 634-8050  
FACSIMILE (714) 634-8469

Z. HARRY ASTOR  
OF COUNSEL

**VIA FAX NO. (916) 319-7291**

LOS ANGELES OFFICE  
800 WILSHIRE BOULEVARD  
FIFTEENTH FLOOR  
LOS ANGELES, CALIFORNIA 90017-2619  
TELEPHONE (213) 680-9212  
FACSIMILE (213) 691-2910  
**Orange**  
PLEASE REPLY TO \_\_\_\_\_

October 5, 2006

Michael Bledsoe, Esq.  
CA. Integrated Waste Management Board  
P.O. Box 4025  
Sacramento, CA 95812-4025

**Re: NOTICE OF APPEAL AND REQUEST FOR  
HEARING (PRC SECTION 45030)**

Dear Mr. Bledsoe:

This notice of appeal and request for hearing is written on behalf of Mr. Wayne Fishback in connection with a recent determination by the County of Ventura to uphold a cease and desist order issued by the Ventura County Local Enforcement Agency for alleged violations of Public Resources Code Sections 44001 and 44002(a).

As we discussed yesterday by telephone, Mr. Fishback's attorney of record, Kate Neiswender, is out of the country and has been absent since September 21, 2006. Owing to her unavailability, I am writing this letter to satisfy the requirements of Public Resources Code Section 45030(a)(1), which establishes a 10-day requirement for submitting Notice of Appeal to the CIWMB and requesting a hearing. It is significant that while the Notice of Decision issued by the hearing officer in this matter was dated September 22, 2006, Mr. Fishback never received a mailed copy of the Decision, which was faxed to him at 4:37 p.m. on September 25, 2006. Thus, Mr. Fishback asserts that the Decision did not "issue" until September 25, 2006, which places him within the 10-day time limit prescribed in the Code.

Section 45030(b) of the Code provides that a written request for hearing should be accompanied by a brief summary statement of the legal and factual basis for the appeal. That information would be best supplied by Mr. Fishback's attorney, who is due to return to this country shortly. In the interim, I offer the following

LAW OFFICES  
**ASTOR & PHILLIPS**  
A PROFESSIONAL LAW CORPORATION

October 5, 2006

Page Two

**Re: NOTICE OF APPEAL AND REQUEST FOR  
HEARING (PRC SECTION 45030)**

summary with the understanding that it will likely be supplemented by counsel for Mr. Fishback upon her return.

Mr. Fishback has allowed inert material from construction sites, consisting of dirt, brick, fully cured concrete and asphalt, to be deposited on the property he owns in the unincorporated area of Ventura County. Mr. Fishback charges no fee for the deposit of this material, which he is using for hillside stabilization and erosion control. The activities undertaken by Mr. Fishback are in compliance with the local Hillside Erosion Control Ordinance, and have been overseen and approved by a licensed engineer. In short, Mr. Fishback's activity constitutes a construction project that is immune from regulation by the Local Enforcement Agency.

For its part, Ventura County, through its LEA, asserts that Mr. Fishback is required to obtain a solid waste permit to conduct this activity. The County bases its position on an interpretation of Public Resources Code Section 40191 (defining "solid waste") which is incorrect. Mr. Fishback contends that the materials in question are not solid waste in this circumstance.

Sections 45030(c) and (d) of the Code provide that a hearing shall be scheduled within 5-days of the Board's receipt of a request for hearing, and that the hearing must occur within 60-days from receipt of the request for the appeal. I ask that you refrain from scheduling a hearing on the appeal until Ms. Neiswender returns from vacation, in order to avoid any scheduling conflicts that may otherwise arise.

Please do not hesitate to contact the undersigned if you have any questions or wish to discuss the contents of this letter.

Very truly yours,



JOHN KELLY ASTOR

JKA:nl

cc: Wayne Fishback  
Kate Neiswender, Esq.

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1 Mr. Elliot Block  
2 Chief Counsel  
3 California Integrated Waste Management Board  
4 1001 I Street, 23<sup>rd</sup> Fl.  
5 Sacramento, CA 95814  
6 Email: [eblock@ciwmb.ca.gov](mailto:eblock@ciwmb.ca.gov)

7 I declare under penalty of perjury under the laws of the State of California that the  
8 foregoing is true and correct.

9 Executed on the 29th day of November, 2006, at Sacramento, California.

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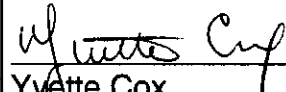
Yvette Cox  
Declarant

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1 Mr. Michael Bledsoe  
2 California Integrated Waste Management Board  
3 1001 I Street  
4 23<sup>rd</sup> Floor  
5 Sacramento, CA 95812  
6 Email: mbledsoe@ciwmb.ca.gov  
7 Attorney for:  
8 CIWMB Staff

9 I declare under penalty of perjury under the laws of the State of California that the  
10 foregoing is true and correct.

11 Executed on the 1st day of November, 2006, at Sacramento, California.

12   
13 Yvette Cox  
14 Declarant